

IN THE COURT OF APPEALS FOR THE STATE OF WASHINGTON

In re the Marriage of:

Serv Wahan,

Respondent,

v.

Sharmila Ahmed,

Appellant.

No. 80518-5-I

DIVISION ONE

UNPUBLISHED OPINION

LEACH, J. — Sharmila Ahmed appeals the trial court’s order denying her motion to stay parts of a parenting plan and awarding fees for intransigence. Because Ahmed does not show the trial court abused its discretion, we affirm the trial court’s stay decision but reverse its fee award and remand with instructions to enter findings of fact and conclusions of law supporting its decision about Ahmed’s intransigence.

BACKGROUND

In 2015, Serv Wahan and Sharmila Ahmed divorced. The trial court entered a final parenting plan for their twin boys, B.W. and C.W.

After the boys turned 13, Wahan asked the court to modify the parenting plan. Wahan claimed Ahmed engaged in restrictive gatekeeping and parental alienation. He also claimed she misled the trial court with false witness testimony.

Citations and pincites are based on the Westlaw online version of the cited material.

The court found adequate cause for modification and appointed a Guardian Ad Litem (GAL), Elise Buie. Buie filed a lengthy interim GAL report.

Trial began on June 12, 2018 and ended July 5, 2018. On December 20, 2018, the court entered a final parenting plan modifying the 2015 plan. The court ordered mutual decision-making with the assistance of a parenting coordinator. Ahmed appealed this decision.

Post-trial, the parenting coordinator issued various orders which included changes to the summer residential schedule and another evaluation by the GAL. Ahmed asked the court to stay the “PC and [d]ecision-[m]aking provisions” of the plan and retain the decision making provisions of the 2015 parenting plan during her appeal. She also asked the court to stay “particular provisions” and place a cap on the GAL fees.¹

The court denied Ahmed’s requests and awarded Wahan fees after finding Ahmed intransigent. Ahmed appeals.

ANALYSIS

Motion to Stay

Ahmed asserts the trial court’s failure to provide an explanation with its order denying her stay request means that she “cannot effectively challenge the order”, and this court cannot evaluate the order.

We review a trial court’s denial of a motion to stay for abuse of discretion.² A trial court abuses its discretion when it makes a manifestly unreasonable

¹ The fees exceeded \$80,000 during the modification proceedings.

² State v. Superior Court of Chehalis County, 43 Wash. 225, 228, 86 P. 632 (1906).

decision or exercises its discretion on untenable grounds or for untenable reasons.³ “An abuse of discretion is found if the trial court relies on unsupported facts, takes a view that no reasonable person would take, applies the wrong legal standard, or bases its ruling on an erroneous view of the law.”⁴

First, Ahmed claims, “a trial court must explain its decisions so that an appellate court may review them for error.” But, she only supports this assertion by stating, “The ‘right to appeal in all cases’ is expressly guaranteed by the Washington Constitution.” She provides no supporting argument or authority. Because Ahmed fails to support the assertion that “a trial court must explain its decisions,” we will not address this claim.⁵

Next, Ahmed claims that similar to Lawrence v. Lawrence,⁶ this court is “unable to determinate on what theory the trial court made its decision.” But, in Lawrence, the court reviewed “the basis for the trial court’s decision to award custody to the father.”⁷ Ahmed challenges the court’s denial of her stay request, not a parenting plan. So, Lawrence is not analogous.⁸

Also, the trial court stated it considered “all pleadings filed in support of and in opposition to the Motion and the record of this case.” In Wahan’s response to Ahmed’s stay request, he stated that Ahmed violated the 2018 parenting plan by

³ Mayer v. Sto Indus., Inc., 156 Wn.2d 677, 684, 132 P.3d 115 (2006).

⁴ Gildon v. Simon Prop. Grp, Inc., 158 Wn.2d 483, 494, 145 P.3d 1196 (2006).

⁵ RAP 10.3(a)(6); Cowiche Canyon Conservancy v. Bosley, 118 Wn.2d 801, 809, 828 P.2d 549 (1992).

⁶ 105 Wn. App. 683, 20 P.3d 972 (2001).

⁷ 105 Wn. App. at 686.

⁸ A parenting plan, similar to the one in this case, does require a clear record for which a trial court based its decision. The same requirement, while helpful, is not always required.

increasing “[White’s] role in [B.W. and C.W.’s] lives[,] staying with B.W. in the hospital, picking [B.W.] up from school . . . and teaching [C.W.] to drive.” Wahan’s response also indicated that Ahmed’s actions have “necessitated the parenting coordinator’s involvement,” such as “challenging the GAL’s rule and recommendations...and attempting to undermine the court’s findings.” This record demonstrates a reasonable basis for the court’s exercise of its discretion. So, Ahmed fails to show the trial court abused its discretion in denying her stay request. We affirm.

Intransigent Finding

Ahmed also claims the record reflects “no basis on which the court could” find her intransigent because the court was required to enter findings of fact and conclusions of law supporting its decision.

A trial court has discretionary authority to order an award for attorney fees.⁹ RCW 26.09.140 allows a trial court to award attorney fees after consideration of the financial resources of each party. Separate from this statutory basis, a trial court may award a party legal fees caused by the other party’s intransigence.¹⁰ Intransigent conduct includes obstructionist behavior, repeatedly filing unnecessary motions, or making a trial unduly difficult and costly.¹¹ For fees awarded on this basis, the party’s ability to pay the fee is irrelevant.¹²

⁹ Matter of Marriage of Crosetto, 82 Wn. App. 545, 563, 918 P.2d 954 (1996).

¹⁰ Matter of Marriage of Greenlee, 65 Wn. App. 703, 708, 829 P.2d 1120 (1992).

¹¹ Greenlee, 65 Wn. App. at 708.

¹² In re Marriage of Foley, 84 Wn. App. 839, 846, 930 P.2d 929 (1997).

When making an award of fees for intransigence, the court should segregate those fees caused by the intransigence from those incurred for other reasons.¹³ But, segregation is not required if the intransigence permeates the entire proceedings.¹⁴

“To withstand appeal, a fee award must be accompanied by findings of fact and conclusions of law to establish a record adequate for review.”¹⁵ In addition, the trial court must state on the record the method it used to calculate the award.¹⁶

The court here did not make any factual findings to support its finding of Ahmed’s intransigence. Because a fee award must be accompanied by findings of fact and conclusions of law, we remand to the trial court to make appropriate findings.

¹³ Crosetto, 82 Wn. App. at 565.

¹⁴ Burill v. Burrill, 113 Wn. App. 863, 873, 56 P.3d 993 (2002).

¹⁵ Matter of Marriage of Laidlaw, 2 Wn. App. 2d 381, 392, 409 P.3d 1184 (2018) (quoting Eagle Point Condo. Owners Ass’n v. Coy, 102 Wn. App. 697, 715, 9 P.3d 898 (2000)).

¹⁶ In re Marriage of Knight, 75 Wn. App. 721, 730, 880 P.2d 71 (1994).

CONCLUSION

We affirm in part and remand for further proceedings consistent with this opinion. Ahmed does not show the trial court abused its discretion by denying her stay request and we affirm this part of its decision. Because the trial court failed to enter findings of fact and conclusions of law about Ahmed's intransigence, we remand to the trial court to make appropriate findings.



WE CONCUR:




